

HOUSE No. 2714

By Mr. Mariano of Quincy, petition of Ronald Mariano relative to co-management agreements of physicians treating ocular surgical patients. Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO CO-MANAGEMENT OF OCULAR SURGICAL PATIENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 5 of chapter 112 of the General Laws, is hereby
2 amended by adding at the end thereof the following new subsec-
3 tion:

4 5M. Standards for Physicians Performing Ocular Surgery.

5 A surgeon who is scheduled to perform eye surgery shall per-
6 sonally examine the patient within two months prior to the surgery
7 and shall be personally responsible for the decision to operate, and
8 for the patient's care in the first 24 hours, or up to and including
9 the first post-operative visit. The surgeon may delegate the
10 responsibility for the second 24 hours of post-operative care for
11 the patient to another person if the delegation occurs through a co-
12 management agreement that meets the requirements of this section
13 and the person to whom the responsibility is delegated is an oph-
14 thalmologist or optometrist licensed under the provisions of this
15 chapter.

16 A co-management agreement may be entered into only when:

17 (1) the distance the patient would have to travel to the regular
18 office of the operating surgeon would result in an unreasonable
19 hardship for the patient, as determined by the patient;

20 (2) the surgeon will not be available for post-operative care of
21 the patient as a result of the surgeon's personal travel, illness, or
22 scheduling difficulties, or

23 (3) other justifiable circumstances exist, as provided under
24 regulations of the board;

25 (4) the agreement provides a fee to the person to whom the
26 care is delegated that does not exceed fair market value of the
27 services provided by the person;

28 (5) the surgeon confirms in writing that the person to whom
29 the care is delegated is qualified to treat the patient during the
30 post-operative period and is licensed or certified to provide the
31 care if license or certification is required by law;

32 The details of the agreement shall be disclosed to the patient in
33 writing before surgery is performed, and shall include:

34 (A) the reason for the delegation;

35 (B) the qualifications, including licensure or certification, of
36 the person to whom the care is delegated;

37 (C) the financial details about how the surgical fee will be
38 divided between the surgeon and the person who provides the
39 postoperative care;

40 (D) a notice that, notwithstanding the delegation of care, the
41 patient may receive post-operative care from the surgeon at the
42 patient's request without the payment of additional fees;

43 (E) a statement that the surgeon will be ultimately responsible
44 for the patient's care until the patient is postoperatively stable;

45 (F) a statement that there is no fixed date on which the patient
46 will be required to return to the referring health care provider; and

47 (G) a description of special risks to the patient that may result
48 from the co-management agreement.

49 The agreement may not take effect unless there is a written
50 statement in the surgeon's file and in the files of the person to
51 whom post-operative care is being delegated that is signed by the
52 patient in which the patient consents to the co-management agree-
53 ment and in which the patient acknowledges that the details of the
54 co-management agreement have been explained and are under-
55 stood.

56 A surgeon may not enter into a co-management agreement gov-
57 erned by this section if the agreement:

58 (1) exists as a matter of routine policy rather than on a case-by-
59 case basis;

60 (2) is not clinically appropriate for the patient;

61 (3) is made with the intent to induce surgical referrals; or

62 (4) is based on economic considerations affecting the surgeon.

63 An ophthalmologist or optometrist may not require, as a condi-
64 tion of making referrals to a surgeon, that the surgeon must enter
65 into a co-management agreement with the ophthalmologist or
66 optometrist for the post-operative care of the patient who is
67 referred.

68 An ophthalmologist or optometrist to whom post-operative care
69 is delegated under a co-management agreement governed by this
70 section may not further delegate the care to another person,
71 regardless of whether the other person is under the supervision of
72 the ophthalmologist or optometrist.

73 It is an affirmative defense to a prosecution under this section
74 or in a disciplinary proceeding for violation of this section that the
75 surgeon delegated postoperative care of a patient because of unan-
76 ticipated circumstances that were not reasonably foreseeable by
77 the surgeon before the surgery was performed. A physicians
78 failure to comply with the provisions of this section shall consti-
79 tute grounds for disciplinary action under section 5 of this chapter.